

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #11	CCRB Case #: 201902210	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/09/2019 9:00 PM	Location of Incident: § 87(2)(b)	Precinct: 70	18 Mo. SOL 9/9/2020	EO SOL 4/26/2021	
Date/Time CV Reported Wed, 03/13/2019 9:28 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 03/13/2019 9:28 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Derek Epstein	00000	938436	070 PCT
2. POM Estharlin Lopez	17248	959766	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Joseph	24346	962509	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Derek Epstein	Abuse: Lieutenant Derek Epstein authorized the entry of the kitchen of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.LT Derek Epstein	Abuse: Lieutenant Derek Epstein authorized the entry of the basement of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.LT Derek Epstein	Abuse: Lieutenant Derek Epstein authorized the search of the basement of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
D.LT Derek Epstein	Discourtesy: Lieutenant Derek Epstein spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.POM Estharlin Lopez	Discourtesy: Police Officer Estharlin Lopez spoke discourteously to § 87(2)(b)	§ 87(2)(b)
F.LT Derek Epstein	Abuse: Lieutenant Derek Epstein searched § 87(2)(b)'s cellphone.	§ 87(2)(b)
G.POM Estharlin Lopez	Abuse: Police Officer Estharlin Lopez searched § 87(2)(b)'s cellphone.	§ 87(2)(b)
H.POM Estharlin Lopez	Abuse: Police Officer Estharlin Lopez threatened to arrest § 87(2)(b)	§ 87(2)(b)

### Case Summary

On March 13, 2019, the § 87(2)(b) filed this complaint with the CCRB via the call processing system.

On March 9, 2019, at approximately 9:00 p.m., § 87(2)(b) was in her restaurant, Rose Fantasy, located at § 87(2)(b) in Brooklyn with her friends § 87(2)(b) and § 87(2)(b). Lt. Derek Epstein, PO Estharlin Lopez, and PO Michael Joseph knocked on the door. § 87(2)(b) allowed the officers into the main part of the restaurant.

Once Lt. Epstein was inside, he, PO Joseph, and PO Lopez went into the kitchen of the restaurant (**Allegation A- Abuse of Authority-** § 87(2)(g)). At the rear of the kitchen was a door to the basement of § 87(2)(b) and Lt. Epstein opened the door to the basement (**Allegation B- Abuse of Authority-** § 87(2)(g)). He searched the basement of § 87(2)(b) (**Allegation C- Abuse of Authority-** § 87(2)(g)).

While Lt. Epstein was in the basement of the restaurant, he allegedly told § 87(2)(b) “I said not to fucking come down here. Why the fuck did you come down here?” (**Allegation D- Discourtesy-** § 87(2)(g)). When § 87(2)(b) was showing PO Lopez a cut on her hand, he allegedly told her not to put “fucking blood” on him (**Allegation E- Discourtesy-** § 87(2)(g)). Lt. Epstein also told § 87(2)(b) that he did not have to show her “shit” when she asked about the contents in the bottle (**under Allegation D**). PO Lopez and Lt. Epstein allegedly told § 87(2)(b) to unlock her phone, and PO Lopez allegedly held it open (**Allegations F and G- Abuse of Authority-** § 87(2)(g)). When § 87(2)(b) was being placed into handcuffs, her friend § 87(2)(b) took video. PO Lopez told her that he would arrest her if she did not move back (**Allegation H- Abuse of Authority-** § 87(2)(g)).

§ 87(2)(b) provided the investigation with cellphone footage allegedly taken by § 87(2)(b) as well as surveillance footage from her bar that she cut herself for the investigation.

The NYPD provided four body-worn camera videos (BWC) of the officers involved.

As a result of this incident, § 87(2)(b) was arrested for § 87(2)(b)

§ 87(2)(b) (Board Review 01).

### Findings and Recommendations

#### **Allegation (A) Abuse of Authority: Lieutenant Derek Epstein authorized the entry of the kitchen of § 87(2)(b) in Brooklyn.**

It is not in dispute that Lt. Epstein entered, and authorized the entry of PO Lopez and PO Joseph, to the back kitchen of § 87(2)(b). This entry was not captured on any video available to the investigation, including body-worn camera footage.

§ 87(2)(b) is the proprietor of § 87(2)(b). She has use of the first floor of the building, and part of the basement, where her management office is. The remainder of the rooms in the basement, such as the boiler room, are under control of the landlord. Her hours of business are 12:00 p.m. to 12:00 a.m., though she occasionally closes early to the public, and operates on a food-delivery-only basis. She applied for a liquor license in February of 2019, at the recommendation of the commanding officer of the 70<sup>th</sup> Precinct, but did not have one as of the time of this incident. § 87(2)(b) denied serving alcohol in her restaurant.

On March 9, 2019, § 87(2)(b) was going to a party for one of her customers at another location. She allowed her sister-in-law, § 87(2)(b) and her sister-in-law’s brother,

§ 87(2)(b) into the restaurant to get ready for the party. She then locked the exterior door of the restaurant, so that no customers could come in.

§ 87(2)(b) heard a knocking on the door, and saw Lt. Epstein, PO Lopez, and PO Joseph. She allowed them into the first-floor section of the restaurant. Lt. Epstein walked into the rear of the establishment to the kitchen, where there is a door to the basement. He requested to go to the back of the restaurant, and then asked her to open the door in the kitchen that leads to the basement, as he needed to go to the basement. § 87(2)(b) asked him if he had a warrant. He said that he did not need a warrant, because he was on a “task force.” Lt. Epstein opened the door to the basement with a credit card.

§ 87(2)(b) who provided an unverified phone statement, said that the restaurant was not open, and the front door was locked at the time that the police came. When they came in, the officers told § 87(2)(b) to go to the kitchen, and then they went into the kitchen (Board Review 02).

The investigation was unable to reach § 87(2)(b) via phone, but a mailing address for her could not be located (Board Review 07).

Lt. Epstein testified that since there was a homicide last year in front of § 87(2)(b), which began after § 87(2)(b) threw a party at which she illegally served alcohol, he had verbally warned § 87(2)(b) about getting a liquor license at various meetings with the 70<sup>th</sup> Precinct and community members, which she attended. Lt. Epstein understood that § 87(2)(b) had trouble obtaining a liquor license because her restaurant was next to a house of worship. He went to her restaurant, however, because he was introducing PO Joseph, a new Neighborhood Coordination Officer, to all the bar owners in the neighborhood.

When Lt. Epstein arrived at § 87(2)(b), he saw a sign that said, “Open.” He did not have a good sense of what the operating hours of the business were. He knocked on the door, and then three minutes later, after hearing a “rustling” noise, § 87(2)(b) answered the door with two other people. She allowed him into the restaurant.

Suddenly, § 87(2)(b) ran to the kitchen, grabbed a knife or a fork, and then ran behind a door in the kitchen. She was also being loud, but Lt. Epstein could not remember anything else about her behavior. Given the abruptness with which she ran to the kitchen, he felt as if he needed to go to ensure her safety.

PO Lopez was with Lt. Epstein when they decided to perform a business inspection at § 87(2)(b)'s restaurant. PO Lopez watched the building from the outside for several minutes. He saw people going in and out, and waiting outside of the location. He could not remember how many people he saw doing so. Lt. Epstein made the decision to enter the location. Lt. Epstein decided to go to the rear of the restaurant, to the kitchen. PO Lopez followed him to act as backup. PO Lopez did not provide any additional reason for going to the kitchen.

PO Joseph remembered that when the officers arrived at the front door of the restaurant, the doors were locked. Within a minute of PO Joseph's arrival at the restaurant, § 87(2)(b) hurried to the kitchen, and he followed, because her rushing to the kitchen within a minute of the officers' arrival was odd, and the kitchen could have contained many items which could be used as weapons. He did not see her grabbing anything. He testified that her safety was the only reason why he went to the rear of the kitchen.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Lieutenant Derek Epstein authorized the entry of the basement of § 87(2)(b) in Brooklyn.**

Whether Lt. Epstein entered the basement of § 87(2)(b) at the request of § 87(2)(b) is in dispute.

§ 87(2)(b) said that when Lt. Epstein went into kitchen, he asked § 87(2)(b) to open the door to the basement. § 87(2)(b) said that he needed a warrant, which he disputed, as he was “task force.” He said that the door could be opened with a knife. § 87(2)(b) retrieved a knife, and tried opening the door, to prove to Lt. Epstein that she could not open the door with a knife. She cut her hand on the knife, and Lt. Epstein used a bank card to open the door of the basement. She did not provide any video footage of the kitchen of her restaurant.

§ 87(2)(b) was in view of the kitchen at the time that § 87(2)(b) and the officers went there. § 87(2)(b) told the officers that she was not open for business, and then he saw one of the officers open the door with a bank card (Board Review 02).

According to Lt. Epstein, § 87(2)(b) said from behind the door that she was locked in, and that Lt. Epstein should use a knife to open the door. Lt. Epstein announced that he would use the Emergency Services Unit or another tool to open the door that § 87(2)(b) was behind. He opened the door with a credit card, and § 87(2)(b) thanked him. He remembered that § 87(2)(b) had a cut on her finger, but did not know how she sustained the cut. After opening the door, he decided to conduct a business inspection, an allegation addressed below.

PO Joseph testified that he heard § 87(2)(b) saying from behind a locked door that she was locked out. Lt. Epstein opened the door for her with a credit card. He testified that she did not have a laceration when he first arrived, but when Lt. Epstein opened the basement door, there was a laceration on her finger. He entered the basement, an allegation addressed below.

PO Lopez did not remember how or under what circumstances the door to the basement of the restaurant was unlocked. He remembered that § 87(2)(b) had a cut on her finger, but did not know how it was sustained. He entered the basement, an allegation addressed below.

Medical Treatment of Prisoner Form § 87(2)(b), completed by PO Joseph indicated that § 87(2)(b) had a minor laceration from running with a sharp object before her arrest (Board Review 18).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Lieutenant Derek Epstein authorized the search of the basement of § 87(2)(b) in Brooklyn.**

It is not in dispute that Lt. Epstein authorized the search of the basement of § 87(2)(b) in Brooklyn, and that he conducted that search in the absence of consent from § 87(2)(b).

Surveillance video from § 87(2)(b) provided to the investigation by § 87(2)(b) showed first Lt. Epstein, then § 87(2)(b) then PO Joseph and PO Lopez going in the basement of § 87(2)(b) and walking around, with Lt. Epstein opening closet and room doors (Board Review 10, timestamps 00:00:00 to 00:01:11 in the video player). In addition, PO Lopez's and PO Joseph's BWC footage showed the officers coming out of the basement (Board Review 05, timestamps 00:00:00 to 00:00:32 in the video player; Board Review 06 timestamps 00:00:00 to 00:00:27 in the video player).

§ 87(2)(b) stated that after Lt. Epstein opened the door with a credit card, he, Lt. Epstein and PO Lopez went downstairs to the basement of the restaurant, while PO Joseph waited with § 87(2)(b) in the kitchen. § 87(2)(b) after a short while, went downstairs herself, and saw Lt. Epstein with bottles of Hennessy cognac and Smirnoff vodka.

§ 87(2)(b) was not in view of the basement at the time that Lt. Epstein and the other officers entered the basement (Board Review 02).

The investigation was unable to reach § 87(2)(b) (Board Review 08).

Lt. Epstein decided after getting § 87(2)(b) out from behind the locked door of the basement to conduct a business inspection. Lt. Epstein had probable cause that people were drinking alcohol at the bar, because when he entered the restaurant, he saw two people drinking alcohol at the bar. He could not describe what kind of alcohol was being consumed. Lt. Joseph decided to search the basement, because it could have stored food or alcohol, and was consequently part of the business.

He, PO Lopez, and PO Joseph went to the basement, and searched all parts of the basement that could have stored alcohol, including all rooms with an unlocked door, and all closets. He found a bottle of alcohol, and then went back upstairs to the bar, where he found three bottles of alcohol. In total, Lt. Epstein recovered four bottles of alcohol, two Smirnoff vodka bottles, one glass, one plastic, a glass Hennessy cognac bottle, and a glass Lords alcohol bottle. He did not remember which bottle was recovered from where. At the time of the search of the basement, § 87(2)(b) was uncooperative, and screaming. He arrested § 87(2)(b) and sent a report notifying the State Liquor Authority of his findings.

PO Lopez testified that § 87(2)(b) for reasons he did not know, ran to the basement after the door was unlocked. Lt. Epstein and PO Lopez followed her to the basement to look for bottles of alcohol. He testified that when he entered the restaurant, he saw several beer bottles on the bar, but could not describe them and did not see anyone drinking from them.

The basement was an open space, not subdivided into different rooms. Within one to two minutes, Lt. Epstein found bottles of hard alcohol. § 87(2)(b) was then arrested.

PO Joseph did not know why Lt. Epstein went to the basement of § 87(2)(b) but he followed him there. When § 87(2)(b) let the officers into the restaurant, there were plastic cups on the bar, but PO Joseph did not know if they had alcohol in them. PO Joseph remembered that officers recovered bottles of alcohol from the basement, but he did not remember who did, nor from where. He photographed the bottles and vouchered them as arrest evidence.

§ 87(2)(g)

New York v. Burger 482 U.S. 691 (1987) ruled that a warrantless search of a junkyard, another “pervasively regulated” business, could only be permissible if there was a “substantial government interest” that informs the regulatory scheme that governs the searches; that the warrantless entries must be necessary to further the regulatory scheme; and that “the inspection program must provide a constitutionally adequate substitute for a warrant...it must limit the discretion of the inspecting officers” (Board Review 04).

People v. Ramirez, 309 A.D.2d 953 (2003) deemed lawful a warrantless routine search of a bodega licensed by the State Liquor Authority that unearthed drugs in plain view (Board Review 16).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) Discourtesy: Lieutenant Derek Epstein spoke discourteously to § 87(2)(b)**

**Allegation (E) Discourtesy: Police Officer Estharlin Lopez spoke discourteously to § 87(2)(b)**

Whether PO Lopez and Lt. Epstein spoke discourteously to § 87(2)(b) is in dispute. Video available to the investigation, including body-worn camera video, does not capture any officer speaking discourteously to § 87(2)(b)

§ 87(2)(b) stated that Lt. Epstein told her “I said not to fucking come down here. Why the fuck did you come down here?” She alleged that after Lt. Epstein found the bottle in the basement, she asked to see it, to verify that it was in fact alcohol. Lt. Epstein said to her, “I don’t have to show you shit.” § 87(2)(b) also testified that as she was ascending the stairs of the restaurant, she tried to show PO Lopez the injury on her hand. PO Lopez allegedly said to her, “Don’t fucking put blood on me.”

§ 87(2)(b) in his unverified statement, indicated that he did not hear any of the conversation between § 87(2)(b) and the officers while the officers were in the basement. He did not hear the officers using profanity when they returned upstairs with § 87(2)(b) (Board Review 02).

The investigation could not reach § 87(2)(b) (Board Review 08).

Lt. Epstein denied using profanity towards § 87(2)(b) during their interaction.

Per PO Lopez, there was a conversation about § 87(2)(b)’s injury, in which he told her not to put blood on him, because she appeared to be “wiping” the blood from her cut on his person. He did not remember, however, that he used profanity during this conversation.

PO Joseph did not remember any of the officers used the alleged profanity.

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Lieutenant Derek Epstein searched § 87(2)(b)'s cellphone.**

**Allegation (G) Abuse of Authority: Police Officer Estharlin Lopez searched § 87(2)(b)'s cellphone.**

Whether PO Lopez and Lt. Epstein searched § 87(2)(b)'s phone is in dispute.

PO Lopez's and PO Joseph's body-worn cameras show § 87(2)(b) from the time that she comes out of the basement, after the officers' search, to the time that she is placed in a police vehicle for a transport. As PO Joseph is handcuffing § 87(2)(b) he takes a phone from her hand, and puts it on the bar of the restaurant (Board Review 05, timestamps 00:00:44 to 00:01:12 in the video player). Shortly afterwards, on PO Lopez's body-worn camera, during a discussion about § 87(2)(b)'s property, § 87(2)(b) mentioned that the phone that he took out of her hand was not in fact hers, but that it belonged to a male individual. She mentioned that her own cellphone was in the kitchen (Board Review 06, timestamps 00:04:10 to 00:04:29 in the video player). As they are leaving the restaurant, as seen on PO Joseph's body-worn camera, PO Joseph and Lt. Epstein go into the kitchen to blow out the burners on § 87(2)(b)'s request, but they are not seen taking a cellphone with them (Board Review 05, timestamps 00:10:53 to 00:11:53 in the video player). At no point does PO Lopez ever handle any cellphone taken from § 87(2)(b)'s person (Board Review 07).

§ 87(2)(b) alleged that when she was being taken into custody, PO Lopez told her to give him her phone. Lt. Epstein told her to unlock her phone, and PO Lopez, while not touching the screen, held it in a way that ensured that the screen would not lock. § 87(2)(b) noticed the next day that footage had been deleted from the application that she uses to control her cellphone.

All of the officers present denied that they entered or searched the phone in any way, or that they deleted any information from § 87(2)(b)'s phone.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (H) Abuse of Authority: Police Officer Estharlin Lopez threatened to arrest**

§ 87(2)(b)

It is undisputed that PO Lopez told § 87(2)(b) that he would arrest her while he was inside of § 87(2)(b). This threat of arrest is not captured on video. On both PO Joseph's and PO Lopez's body-worn camera videos, a female individual can be seen getting within arm's length of Lt. Epstein, PO Joseph, and PO Lopez, and Lt. Epstein tells her to get back. She complies (Board Review 06, timestamps 00:01:46 to 00:01:50 in the video player).

Shortly afterwards, PO Lopez tells her to go outside, because the business is being closed. She also complies with this directive (Board Review 06 timestamps 00:04:28 to 00:04:44 in the video player). At no point in the video that § 87(2)(b) provided, which she said was § 87(2)(b) video, did PO Lopez threaten to arrest § 87(2)(b) (Board Review 07).

§ 87(2)(b) stated that when § 87(2)(b) began taking video of § 87(2)(b) while officers were taking her into custody, PO Lopez told her, “Go outside or we’ll arrest you.”

§ 87(2)(b) said over the phone that an officer told § 87(2)(b) “Mind your business or we’ll arrest you,” when she started recording § 87(2)(b) being taken into custody (Board Review 02).

The investigation could not reach § 87(2)(b) (Board Review 08).

PO Lopez confirmed that he discussed arresting this female individual. She started to record the incident as § 87(2)(b) was being taken into custody, and came within about an arm’s length of PO Lopez. PO Lopez told her to back up, and she complied. He did not at any point see her committing a crime. PO Lopez explained to her that if she interfered with the investigation, then she would be placed under arrest.

Lt. Epstein did not remember any officer telling any civilian that they could be arrested. PO Joseph believed that it was possible that an officer told the civilians present that they could be arrested if they interfered in any way.

§ 87(2)(g)

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 09).
- This is the first CCRB complaint involving § 87(2)(b) (Board Review 11).
- Lt. Epstein has been a member of service for 14 years. He has been a subject in seven previous complaints, with 12 prior allegations. None of these allegations has been substantiated.
  - § 87(2)(g)
- PO Lopez has been a member of service for three years. He has been a subject in two prior CCRB complaints, and seven prior allegations. None of these allegations has been closed as substantiated. Cases 201906410 and 201909647, in which PO Lopez is listed as a subject, are still under investigation.
  - § 87(2)(g)

### **Mediation, Civil and Criminal Histories**



- This case was not suitable for mediation.
- On § 87(2)(b), the investigation received a Notice of Claim for § 87(2)(b) filed in regards to this incident. § 87(2)(b) claimed false arrest, abuse of process, malicious prosecution, deprivation of right to a fair trial, denial of due process, prima facie tort, conspiracy, intentional tort, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent hiring, negligent retention, negligent discipline, negligent training, negligent supervision, respondeat superior, unlawful entry, violation of civil rights, institution and/or pattern and practice of constitutionally violative practices and policy, racial profiling, policies or practice inside the New York police department that have a disparate impact on black Americans, deliberate indifference to constitutionally violative practices and policy, ratification of constitutionally violative practices and policy, failure to train, supervise and discipline to protect criminal defendants against constitutionally violative practices and policies, mental and emotional injuries interference with life's enjoyment, family relationships, and economic opportunity, excessive force, assault and battery, and various state and federal constitutional and statutory violations. She is seeking \$2,000,000 in restitution (Board Review 12). As of November 15, 2019, no 50-H hearing has been held in regards to this case (Board Review 13). On December 19, 2019, the investigation submitted an additional query to the New York City Office of the Comptroller, and the results will be added to the case file upon receipt (Board Review 19).
- § 87(2)(b), § 87(2)(c)
- § 87(2)(b), § 87(2)(c)

Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date

